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IN THE SUPREME COURT OF THE UNITED STATES

JEANNE WOODFORD, Warden, California State Prison at San Quentin, *Petitioner,*

v.

BRUCE WAYNE MORRIS, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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24 pp

CAPITAL CASE
QUESTIONS PRESENTED

The District Court granted summary judgment and denied the capital prisoner's petition for writ of habeas corpus when the prisoner failed to provide any proof to either state or federal courts of any genuine issue of material fact. The prisoner had received approximately $100,000 in pre-petition investigation funds, but failed to show "good cause" for discovery. The Ninth Circuit remanded for an evidentiary hearing because the prisoner raised a "colorable claim" of ineffective assistance of counsel and incompetency.

The questions presented are:

1. Do the restrictions on factual development by a prisoner in federal habeas corpus proceedings in *Keeney v. Tamayo-Reyes*, 504 U.S. 1 (1992) and *Michael Williams v. Taylor*, 529 U.S. 420 (2000) apply **only** when the state has conducted an actual evidentiary hearing on the prisoner's claims?

2. Notwithstanding *Blackledge v. Allison*, 431 U.S. 63, 80 (1977), which held that a district court may deny a habeas corpus petition by summary judgment, is a prisoner still entitled to an evidentiary hearing merely because he raised a "colorable" claim even though the District Court issued an undisturbed finding that the prisoner failed to produce any evidence in state or federal court of any genuine issues of material fact?

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IN THE SUPREME COURT OF THE UNITED STATES

No.

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v.

BRUCE WAYNE MORRIS, *Respondent.*

OPINION OR JUDGMENT BELOW

The Ninth Circuit Court of Appeals opinion is reported at 229 F.3d 775 (9th Cir. 2000) and is reproduced in the Appendix. The unpublished District Court opinion granting the State's motion for summary judgment, denying the petition for writ of habeas corpus, and rejecting in part the findings and recommendations of the Magistrate Judge is reproduced in the Appendix. The findings and recommendations of the Magistrate Judge adopted by the District Court are reproduced in the Appendix. The California Supreme Court opinion affirming the judgment is reported at 53 Cal. 3d 152, 807 P.2d 949, 279 Cal. Rptr. 720 (Cal. 1991).

STATEMENT OF JURISDICTION

The Court of Appeals entered its judgment on October 5, 2000. (App. 1.) A petition for rehearing and petition for rehearing en banc was denied on November 16, 2000. (App. 11.) The jurisdiction of this Court is timely invoked under 28 U.S.C. § 1254(1).

STATUTES AND RULES

Pursuant to Rule 14 of the Rules of the Supreme Court of the United States, the pertinent portions of the following statutes and rules are set out verbatim in the appendix: 18 U.S.C. § 3006A (App. 388); 21 U.S.C. § 848(q) (App. 388); 28 U.S.C. §§ 2243, 2254(e) (App. 389-390); FRCP Rules 1, 56 (App. 390); Rules 6, 7, and 8 of the Rules Governing Section 2254 Cases (App. 391-392); and Local Rule 81-191 of the Rules of United States District Court for the Eastern District of California. (App. 392 .)

STATEMENT OF THE CASE

In 1987, Respondent/prisoner Bruce Wayne Morris [hereinafter Morris] was sentenced to death in California for the 1985 murder of Rickey Van Zandt. The victim had "gone out of his way to help" Morris and his female companions. However, in a "heinous and brutal" act of murder and robbery, Morris "viciously attacked and killed" Van Zandt. He "repeatedly struck a defenseless victim over the head with a rock; rolled him down an embankment; and then hit him again with a stick when he tried to get up." Morris confessed on multiple occasions. He "boasted about his crime to at least three people and said he would do it again." In the penalty phase, there was evidence of Morris's prior convictions for kidnaping and attempted rape, his troubled childhood, positive qualities, and

mild-to-moderate mental dysfunction. *People v. Morris*, 53 Cal.3d 152, 234, 807 P.2d 949, 279 Cal.Rptr. 720 (Cal. 1991).

The California Supreme Court denied Morris's habeas corpus petition in 1990 and affirmed the judgment on direct review in 1991. Morris commenced federal habeas corpus proceedings in 1992. Over the course of the next year and a half, the District Court paid $94,927.92 in pre-petition investigative fees to Morris's two appointed counsel. (App. 42-43.)[1/] According to Morris, he obtained "detailed and complex documents and information about [his] prior convictions, family history, and lifelong mental health struggles." (App. 385.) Morris filed his first habeas corpus petition in 1993, which was stayed while he exhausted claims in state court including ineffective assistance of counsel and incompetency. After almost two years, Morris filed a second state habeas corpus petition to exhaust these claims. He requested discovery and an evidentiary hearing, but provided no evidentiary support for his claims. Accordingly, the California Supreme Court denied the petition five days later on procedural grounds and on the merits. (App. 228-294.)

A. District Court Grants Summary Judgment

Upon his return to federal court, Morris filed a discovery motion and an opposition to the State's 183-page motion for summary judgment in District Court. Despite his pre-petition investigation, Morris **never** introduced any evidence to support the allegations in his petition or other pleadings. (App. 42, 228-294, 295-312, 313-383.) After full briefing on the summary judgment motion in 1997, the District Court adopted findings and recommendations that certain claims be denied as procedurally defaulted, including claims of ineffective assistance of counsel and incompetency. (App. 65.)

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1. Morris earlier received $1,450.00 for investigative funds in state court. (App. 385.)

The District Court branded Morris's claim of "cause" for defaults as "obfuscatory and specious." The District Court pointed out that Morris investigated his claims for nearly one and one-half years along with "approximately $100,000" in investigative fees. (App. 42-43.)

In 1999, the District Court adopted the Magistrate Judge's exhaustive and detailed recommendations. The court granted the State's summary judgment motion as to all of Morris's claims and denied his habeas corpus petition.[2/] The District Court stated that the claims of ineffective assistance of counsel and incompetency, which it had found procedurally defaulted, were also meritless and that Morris had failed to prove any genuine issues of material fact. (App. 100 & n.12, 101-104, 106-107, 116, 132, 170-171, 190, 204 fn. 49, 213, 215-216, 218, 224.) Morris had not proffered any evidence pursuant to *Blackledge v. Allison*, 431 U.S. 63, 80 (1977), *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986), and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-250 (1986). (App. 81-82.) The District Court also denied Morris's discovery motion as a "fishing expedition" unsupported by "good cause" or "specific allegations" supported by any evidence.

Among the District Court's specific findings:

Morris presented no evidence to support his claim that trial counsel did not investigate the backgrounds of prosecution witnesses:

> Petitioner may not simply make bold assertions without any actual basis, ask for discovery and investigation on the foundationless claims, and hope that something turns up for evidentiary hearings. This is not an issue about whether Petitioner has received

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2. The district court rejected findings and recommendations that Morris's petition be granted on a penalty phase instructional claim. This particular claim is not pertinent to the question presented by this petition. As a matter of "judicial economy," the Ninth Circuit chose not to rule on this claim pending the remand for an evidentiary hearing.

> sufficient investigative funds or discovery, it is an issue about insufficient opposition to summary judgment in habeas corpus proceedings.

(App. 100, n. 12.)

As to claims that Morris's counsel failed to challenge jurors for cause and failed to investigate accomplices, jailhouse informants, and the victim the District Court reiterated:

> The guilt phase ineffective assistance claims in this case, in combination with no factual presentation to oppose summary judgment, exemplify poor pleading practice in federal capital habeas proceedings that coverup and frustrate adjudication of legitimate issues. Petitioner makes belated, speculative baseless, and at times inconsistent assertions and expects the federal court to spend years in discovery and adjudicating every one of the assertions.

(App. 204, n.49.)

As to Morris's claim that his counsel failed to investigate his alleged mental state as a confabulator or to show that he did not confess to a jail inmate, despite Morris's admission at trial that he made the statements: "Petitioner offers no support-zero for the proposition that petitioner suffered from a mental disorder that caused him to make up events or half-truths. . . ." (App. 103.)

Morris's incompetency claim was "factual[ly] bankrupt[]" because Morris also alleged he "actively" assisted his attorneys. Morris was trying to have it "both ways" with his "hot and cold" incompetency claim. (App. 208.) The District Court noted that Morris did

> not supply extra-record evidence, but rather base[d] the incompetency argument on evidence existing in the record presented at the penalty phase (and from which no trial expert deemed petitioner incompetent). . . . Petitioner has presented no evidence. . . . None of the reports referred to by petitioner in his opposition are attached as exhibits. In some cases, the source of petitioner's references is

not clear.
(App. 210 & n.50.)

B. Ninth Circuit Opinion And Remand

The Ninth Circuit Court of Appeals vacated the denial of the petition for writ of habeas corpus, remanded the case for an evidentiary hearing on Morris's claims of ineffective assistance of counsel and incompetency, deferred ruling on other claims, and otherwise affirmed the granting of the summary judgment. (App. 1-10.) The Court of Appeals rejected the argument under *Keeney v. Tamayo-Reyes*, 504 U.S. 1 that Morris was not entitled to a federal evidentiary hearing because he failed to develop the material facts in state court. The Court of Appeals concluded instead that Morris was entitled to a federal evidentiary hearing because he had not received a hearing in state court or "at any level." The Court of Appeals acknowledged that Morris would not be entitled to an evidentiary hearing if he had negligently failed to develop the facts in state court. However, it made no inquiry into the reasons for Morris's failure to seek an evidentiary hearing in California in the manner prescribed by California law. (App. 8-10.)

Unlike the District Court, the opinion also did not apply summary judgment procedures. The court simply relied on prior Ninth Circuit precedent to hold that Morris had asserted a "colorable" claim entitling him to a hearing.[3] The Court of Appeals also emphasized that "fuller factual development" would assist appellate review. The Court of Appeals neither mentioned nor disturbed the numerous factual findings of the District Court. The Court of Appeals did not state the fact that Morris had received approximately $100,000

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3. This circuit precedent has not been without controversy even within the Ninth Circuit. *See, e.g. Caro v. Calderon*, 165 F.3d 1223, 1227 (maj.opn.), 1228 (Kleinfeld, J. dis.)

in pre-petition investigative funds and that Morris had apparently withheld evidence he allegedly obtained. The opinion made no mention that Morris's state habeas petition was not supported by any reasonably available documentary evidence. It did not explain that Morris's discovery motion contained no specific supporting allegations. Finally, the opinion did not disclose that Morris did not supply any factual support in opposition to the motion for summary judgment nor did it reference the District Court's multiple findings that Morris failed to carry his burden of producing contrary evidence of genuine issues of material fact.[4]

REASONS FOR GRANTING THE PETITION

To obtain an evidentiary hearing in federal court, a habeas corpus petitioner must satisfy at least two threshold requirements. First, he must justify his failure to develop the facts at the state-court level. *See Keeney v. Tamayo-Reyes*, 504 U.S. 1; *Michael Williams*, 529 U.S. 420 (2000). Second, he must at least meet the ordinary test for defeating a summary judgment motion, namely, showing that there remain genuine issues of material fact. *See Blackledge v. Allison*, 431 U.S. at 80 (holding that ordinary summary judgment rules apply to habeas corpus proceedings).

In the decision below, the Ninth Circuit Court of Appeals did not merely misapply those two settled principles; it used altogether different rules for determining when to excuse a habeas petitioner's failure to develop facts in state court and when a state's summary judgment motion may be denied. As a consequence, and in conflict with this Court's decisions, the

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4. The Ninth Circuit opinion asserts that no evidentiary hearing was conducted in state or federal court because Morris's claims had been procedurally defaulted. (App. 9.) However, the opinion did not contradict the District Court's conclusion that Morris also had had the opportunity to produce evidence of a genuine issue of material fact and that his claims would have been rejected on the merits.

court of appeals has significantly lowered the bar to federal evidentiary hearings in habeas corpus proceedings in California and the other eight states within the Ninth Circuit.

I.

THE NINTH CIRCUIT'S REMAND FOR AN EVIDENTIARY HEARING BECAUSE RESPONDENT MORRIS DID NOT RECEIVE AN EVIDENTIARY HEARING IN STATE COURT OR "AT ANY LEVEL" CONFLICTS WITH *KEENEY V. TAMAYO-REYES* AND *MICHAEL WILLIAMS V. TAYLOR*.

The Ninth Circuit remanded Morris's case for an evidentiary hearing even though Morris had not developed the material facts supporting his claims in state court as required by this Court in *Keeney v. Tamayo-Reyes*, 504 U.S. 1 and *Michael Williams v. Taylor*, 529 U.S. 420. The Court of Appeals acknowledged *Keeney's* holding that "a petitioner who negligently fails to develop the material facts supporting a claim at the state court level generally is not entitled to an evidentiary hearing. . . ." *Keeney*, at 8-10. The court held, however, without any analysis that since Morris did not receive an evidentiary hearing in state court or "at any level," he should still have the opportunity for a hearing in federal court. (App. 9.) The Ninth Circuit's decision creates an insupportable loophole in the "meaningful" state exhaustion rule underlying *Keeney*, including the interpretation of the *Keeney* standard as it is now codified in 28 U.S.C. § 2254(e) of the AEDPA.[5]

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5. This is not an AEDPA case since the petition was filed prior to the effective date of that statute. However, the *Keeney* standard is codified in the AEDPA, so its interpretation by the Ninth Circuit will carry over to the AEDPA. Furthermore, summary judgment procedures will continue to be applicable to habeas corpus cases under the AEDPA since a district court

A state evidentiary hearing is not a prerequisite to applying *Keeney* and *Williams*. Indeed, *Williams* applied the *Keeney* standard (as codified in the AEDPA) to reject a petitioner's claim in a case in which the state had not conducted an evidentiary hearing. *Williams*, 529 U.S. at 430, 437-440. As *Keeney* states, "[T]he requirement of exhaustion is not satisfied by the **mere statement** of a federal claim in state court." 504 U.S. at 10 [emphasis added]. The applicants must first raise their claims and diligently "**seek** an evidentiary hearing in state court in the manner prescribed by state law." *Williams*, 529 U.S. at 434, 437 (reiterating *Keeney* and holding that *Keeney* is codified in the AEDPA) [emphasis added].

The plain language of both opinions demonstrates that *Keeney* and *Williams* both apply to the initial pleading stages of state collateral review. It could hardly be otherwise. It makes no sense to bar a federal evidentiary hearing when a habeas petitioner failed to develop facts at a state evidentiary hearing, but permit a federal hearing when a petitioner has negligently failed to even seek or justify a hearing.

Morris's receipt of nearly $100,000 in investigative funds highlights the problem with the Ninth Circuit's newly-minted standard. Even with this unique financial support and his alleged acquisition of "detailed and complex documents and information about [his] prior convictions, family history, and lifelong mental health struggles" during the pre-petition investigation, he failed to seek a hearing according to state procedure. (App. 385.) California law requires a state habeas corpus petition include "copies of reasonably available documentary evidence supporting the claim, including pertinent portions of trial transcripts and affidavits or supporting declarations." *People v. Duvall*, 9 Cal.4th 464, 474-479; 37 Cal.Rptr. 259; 886 P.2d 1252 (Cal.1995). Thus, Morris did not

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is only authorized to grant an evidentiary hearing if a petitioner meets the standards of 28 U.S.C. § 2254(e), but is not mandated to hold a hearing. *See, e.g. Downs v. Hoyt*, 232 F.3d 1031, 1041 (9th Cir. 2000); *Murphy v. Johnson*, 205 F.3d 809, 815 (5th Cir. 2000).

seek an evidentiary hearing as prescribed by California law and did no more than merely state his federal claims in state court. It should have been irrelevant to the Ninth Circuit that California did not conduct a hearing in Morris's case.

By making *Keeney* and *Williams* contingent on the actual holding of an evidentiary hearing in state court, the Ninth Circuit has gutted those cases. Both cases are based on "concerns of finality, comity, judicial economy, and channeling the resolution of claims into the most appropriate forum" animating those decisions. *Keeney*, 504 U.S. at 8. The Ninth Circuit remand signals that habeas petitioners may withhold evidence at the pleading stage in the state forum and still get an evidentiary hearing in federal court after the state has properly denied a hearing in state court. Yet, one of the principal concerns animating *Keeney* was to avoid "creating incentives for the deferral of factfinding [which] can only degrade the accuracy and efficiency of judicial proceedings." *Id.* at 9. The requirement of "meaningful exhaustion" in *Keeney* will itself become meaningless. *Id.* at 10. Moreover, the Ninth Circuit's interpretation of *Keeney* directly applies to this Court's interpretation of that standard as it is now codified in the AEDPA. The Ninth Circuit decision merits review or summary reversal on this ground alone.

II.

THE NINTH CIRCUIT'S REMAND FOR AN EVIDENTIARY HEARING ON RESPONDENT MORRIS'S "COLORABLE" CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL AND INCOMPETENCY REQUIRING FULLER FACTUAL DEVELOPMENT DEPARTS FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, CONFLICTS WITH THIS COURT'S HABEAS CORPUS AND SUMMARY JUDGMENT CASES, AND CONFLICTS WITH DECISIONS OF OTHER CIRCUITS.

The Ninth Circuit panel compounded its erroneous interpretation of *Keeney* and *Williams*, by also ignoring Morris's failure to carry his burden of proving a genuine issue of material fact in opposition to the State's summary judgment motion. In 1977, this Court held that summary judgment was an appropriate procedure to dispose of habeas corpus proceedings without unnecessary evidentiary hearings. *Blackledge v. Allison*, 431 U.S. at 80. Since 1977, this Court has spoken to the standards for summary judgment in civil cases. These cases signaled to district courts that summary judgment "can be relied upon more so than in the past to weed out frivolous lawsuits and avoid wasteful trials." 10A C. Wright, A. Miller, & M. Kane, Federal Practice & Procedure 3d, § 2727, p. 468 (1998). The Ninth Circuit's remand of Morris's case now demonstrates the need for this Court to speak to the continuing efficacy of summary judgment cases in federal habeas. The Court of Appeals' opinion ignores this intersection of habeas corpus and summary judgment procedures. It departs so far from the accepted and usual course

of judicial proceedings to call for this Court's supervisory power.

The continuing, uniform application of summary judgment to habeas corpus is an important national question. *See, e.g. Townsend v. Sain*, 372 U.S. 293, 325 (1963) (Goldberg, J. conc.). In capital cases, district courts have a "duty to take all steps necessary to ensure a prompt resolution of the matter, consistent with its duty to give full and fair consideration to all of the issues presented in the case." *In re Blodgett*, 502 U.S. 236, 240 (1992). District courts are the "front line" in disposing "quickly, efficiently, and fairly of first habeas petitions that lack substantial merit...." *Townsend*, 327 U.S. at 318-319; *Lonchar v. Thomas*, 517 U.S. 314, 320, 325-326 (1996); *Barefoot v. Estelle*, 463 U.S. 880, 887-888 (1983); 28 U.S.C. § 2243. As this Court observed just last Term in *Slack v. McDaniel*, 529 U.S. 473, 489 (2000), the Federal Rules of Civil Procedure "vest[s] the federal courts with due flexibility to prevent vexatious litigation."

One of the tools available to the district court has been summary judgment. FRCP 56. As this Court explained in *Blackledge*, 431 U.S. at 80-81,

> not . . . every set of allegations not on its face without merit entitles a habeas corpus petitioner to an evidentiary hearing. . . . [T]here exists a procedure whose purpose is to test whether facially adequate allegations have sufficient basis in fact to warrant plenary presentation of evidence. That procedure is, of course, the motion for summary judgment. . . . [The Petitioner] is required either to produce some contrary proof indicating that there is a genuine issue of fact to be resolved by the District Court or to explain his inability to provide such proof.

Summary judgment complements habeas corpus since it is "intended to prevent vexation and delay, improve the machinery of justice, promote the expeditious disposition of cases, and avoid unnecessary trials when no genuine issues of fact have been raised." 10A Wright, § 2712, pp. 199-200.

Subsequent to *Blackledge*, this Court refined the general summary judgment rules, stating in *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986), that summary judgment is mandated "after adequate time for discovery" when there is "a complete failure of proof concerning an essential element of the nonmoving party's case. . . ." The nonmovant must present affirmative evidence and not merely rely on conclusory allegations or "merely colorable" claims. *Id.* at 328 (White, J. conc.); *Anderson*, 477 U.S. at 249, 251-257.

Habeas corpus is now singularly suited to summary judgment resolution. The state and federal habeas continuum gives applicants the tools to produce affirmative evidence of genuine issues of material fact. Unlike other civil suits which start from scratch in federal court, habeas applicants commence proceedings with a preexisting state trial, appellate, and collateral record that is lodged with the federal court. Capital applicants are entitled to a stay of execution and pre-petition appointment of experienced counsel and ancillary services to research and identify "possible claims and **their factual bases**. . . ." *McFarland v. Scott*, 512 U.S. 849, 855 (1994) (interpreting 21 U.S.C. § 848(q) [emphasis added]; U.S.D.C. Cal.E.D. L. Rule 81-191.[6] As already noted, *Keeney* and *Williams* require applicants to diligently develop claims pursuant to state law. California law provides for compensation and reasonable investigative expenses of appointed counsel in capital cases. *In re Clark*, 5 Cal.4th 750, 783 & fn. 19, 811-812; 21 Cal.Rptr. 509; 855 P.2d 729 (Cal.1993); *People v. Gonzales*, 51 Cal.3d 1179, 1258; 275 Cal.Rptr. 729, 800 P.2d 1159 (Cal. 1990)(discovery on state habeas). Federal courts must grant discovery to habeas applicants based on "good cause." The parties or the district court may expand the record. The district court determines if an evidentiary hearing is required and "make such disposition of the petition as justice shall require." *Bracy v. Gramley*, 520 U.S. 899, 909 (1997);

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6. Non-capital applicants may also receive assistance after a petition is filed. 18 U.S.C. § 3006A.

Rules Gov. § 2254 Cases, Rules 6, 7, and 8.

Instead of applying the summary judgment procedures used by the District Court, the Ninth Circuit ignored them altogether. The panel remanded a 1985 murder case for an evidentiary hearing after the District Court denied the petition on summary judgment. Yet, the court did not account for the indisputable fact that Morris had received approximately $100,000 to investigate and prepare a state and federal petition, but failed to present any supporting evidence of his claims in state court, as "good cause" for discovery, or in opposition to summary judgment. [7] Instead, in contravention of *Anderson*, the court held that Morris's raising of a mere "colorable" claim was sufficient for an evidentiary hearing.

This holding not only conflicts with this Court's decisions in *Blackledge*, *Celotex*, and *Anderson*, but it also conflicts with the decisions of other circuits. *See, e.g., Zambito v. Blair*, 610 F.2d 1192, 1197-1198 (4th Cir. 1979); *Porcaro v. United States*, 641 F. Supp. 1375, 1381-1382, 1390 (D. Mass. 1986) aff'd *Porcaro v. United States*, 832 F.2d 208, 212-214 (1st Cir. 1987); *Bass v. Singletary*, 143 F.3d 1442, 1445-1446 (11th Cir. 1998).

Similarly, this Court and other circuits would not have rewarded Morris for **withholding** from state and federal court the "detailed and complex documents and information about [Morris's] prior convictions, family history, and lifelong mental health struggles" which he claimed he had obtained. *Citizens Bank of Clearwater v Hunt*, 927 F.2d 707, 713 (2nd Cir. 1991); *United States v. Kenealy*, 646 F.2d 699, 706 (1st Cir. 1981); *see also Keeney*, at 17 (O'Connor, J. dis.) citing *Townsend*, 372 U.S. at 317;.

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7. The Ninth Circuit opinion also cryptically mentions a need for a "more developed factual record. . . ." (App. 9.) Whatever the applicability of a "fuller factual development" doctrine in summary judgment (*Anderson*, 477 U.S. at 255), it is a tautology in habeas corpus practice. Habeas is a limited, secondary process in which the applicant has already had multiple opportunities for factual development through trial, appeal, state habeas, investigation, and discovery..

The remand also conflicts with decisions that discovery on summary judgment and habeas corpus cannot be mere "fishing expeditions." *See, e.g., Bastin v. Federal Nat'l Mortgage Ass'n*, 104 F.3d 1392, 1396 (D.C. Cir. 1997); *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970); *Deputy v. Taylor*, 19 F.3d 1485, 1493 (3rd Cir. 1994); *Ward v. Whitley*, 21 F.3d 1355, 1367 (5th Cir. 1994); *Gardner v. Howard*, 109 F.3d 427, 431 (8th Cir. 1997).

In this case, the District Court did everything right. Morris and his counsel received approximately $100,000 to research and identify claims. Morris claims he actually acquired evidence, but withheld it. When Morris failed to support his claims in state court with any available evidence pursuant to state law, the state court properly denied his petition both procedurally and on the merits. Subsequently, in District Court Morris filed an amended petition which the State answered. Morris filed a discovery motion that was not supported by any evidence to support his claims. When the State filed a summary judgment motion, Morris failed to produce any affirmative evidence of a genuine issue of material fact.

In 1963, Chief Justice Warren warned against the "promiscuous" granting of evidentiary hearings in habeas corpus. *Townsend*, 372 U.S. at 319. The District Court carefully balanced the concerns of finality, federalism, and fairness underlying this Court's habeas jurisprudence when it followed this Court's precedents and granted summary judgment. The Ninth Circuit ignored Chief Justice Warren's admonition by casually granting Morris an evidentiary hearing he did not earn and imposing a burden on the State and the District Court that they do not deserve. This Court should vindicate the District Court.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

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Respectfully submitted,

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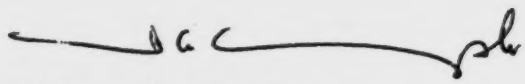

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